BRANT CONSTRUCTION MANAGEMENT, INC.

LEASE NO. O84B-020-94 **VABCA-5391**

VA OUTPATIENT CLINIC ROCHESTER, NEW YORK

Michael L. Muenich, Esq., Highland, Indiana, for the Appellant.

Dennis M. Foley, Esq., Trial Attorney; ***Philip S. Kauffman, Esq.,*** Deputy Assistant General Counsel; and ***Phillipa L. Anderson, Esq.***, Assistant General Counsel, Washington, D.C., for the Department of Veterans Affairs.

OPINION BY ADMINISTRATIVE JUDGE KREMPASKY

INTRODUCTION

Appellant, Brant Construction Management, Inc. (Brant) seeks additional payment under Lease 084B-020-94 (Contract) of an outpatient clinic in Rochester New York (Clinic) for all the vinyl wall covering (VWC) and ceramic wall tile (CWT) it installed in the Clinic. Brant's claim is based, alternatively, on breach of contract, reformation, or rescission and equitable restitution. The Respondent, Department of Veterans Affairs (VA or Government), contends that Brant is not entitled to payment for all the VWC and CWT installed because the Contract payment terms for those items were patently ambiguous and Brant did not inquire about the payment terms before submission of its proposal.

The parties have elected to submit this appeal for decision on the written record pursuant to Board Rule 11. The record consists of the Complaint and Answer, the Appeal File consisting of 21 exhibits submitted by Brant and the VA (cited as: R4, tab #), one evidentiary exhibit, the affidavit of Mr. William J. Brant, submitted by Brant (cited as: "Exh. A-1"), Brant's Schedule of Costs and the VA's response thereto (cited as "Exh. A-2" and "Exh. G-1" respectively), and the parties' simultaneous Main and Reply Briefs. Both entitlement and quantum are before the Board.

PRELIMINARY MATTERS

The VA has filed a Motion To Exclude Evidence objecting to the introduction of Mr. Brant's affidavit into the record. The VA bases its Motion on its assertion that the affidavit was not submitted within the time specified in the Board's Amended Presubmission Order. Mr. Brant's affidavit was filed with the Board as supplementary evidence on April 15, 1998. Under the schedule (which the Board had extended to accommodate the VA) established by the Board, supplementary evidence was due on or before April 3, 1998; rebuttal evidence was due on or before April 17, 1998. Therefore, the affidavit of Mr. Brant was timely filed as rebuttal evidence and we will treat it as such. Accordingly, the VA's Motion To Exclude Evidence is **Denied.**

FINDINGS OF FACT

The Contract, entered into on September 30, 1994, provides for Brant to furnish the Clinic, consisting of a one-story building containing 41,205 net usable square feet of space and 110 parking spaces constructed in accordance with specifications set forth in Solicitation for Offers ("SFO") 084B-020-94 and addenda thereto. The Contract is for a fifteen-year lease beginning on the date of the VA's acceptance of construction at an annual lease amount of $666,696.90. There is one five-year optional renewal term in the Contract. The Contract contemplates Brant's construction of the Clinic and provides for a payment of a lump sum for certain construction costs in addition to the annual lease amount. The initial lump sum payment set for construction costs was $1,565,700; that amount was later modified by subsequent Supplemental Lease Agreements ("SLA"). The lease term was originally to begin in August 1995. By SLA No. 3, apparently reflecting construction delays, the base lease term was established as October 16, 1996 to October 15, 2011. (R4, tab 1)

The Contract consists of: Standard Form 2, "U. S. Government lease for Real Property" with three pages of "Additional Provisions" added by the VA; GSA Form 3517, "General Clauses"; GSA Form 3518, "Representations and Certifications"; the Supplemental Lease Agreement ("SLA"), (SLAs 1, 2, and 3), and the SFO, including Brant's proposal. The Standard Form 2 and GSA forms contain the standard clauses normally found in Government leases of real property. (R4, tab 1)

The SFO consists of nine parts; the five parts listed below are relevant to this appeal:

1. Basic Solicitation Requirements;
2. Schedule A, "Special Requirements To Basic SFO To Be Included In Rental Rate";
3. Schedule B, "Special Requirements";
4. Schedule B-1, "Special Requirements Cost Sheet" consisting of Exhibit A, "Unit Price for Adjustment" and Exhibit B, "Unit Price For Alteration"; and,
5. Schedule C, "Function, Space, and Finish Schedule."

The following are provisions of the Contract (R4, tab 1) pertinent to this appeal:

> *Additional Provision 13 to Standard Form 2.*
>
> The Government shall reimburse the Lessor in the amount of $1,565,700.00 for those items specified in Schedule B upon acceptance of the space by the Contracting Officer or designee. Payment will be due within 30 calendar days after the date of acceptance or included in the first full month's rent, which ever is later.
>
> *Additional Provision 23 to Standard Form 2.*
>
> Where there exists any discrepancy between the Solicitation for Offers and Standard Form 2

with the attached Additional Provisions, Standard Form 2 and the Additional Provisions shall govern.

Section 3.2 of the SFO Basic Solicitation Requirements, "Unit Cost For Adjustments."

Several paragraphs in this Solicitation specify means for determining quantities of materials. These are Government projections to assist the Offeror in cost estimating. Actual quantities may not be determined until after the lease is awarded and the space layout completed. To enable an equitable settlement if the Government layout departs from the projection, the offeror must list a unit cost for each of these materials. Since the measurement of designated wall-coverings cannot be determined prior to design, a cost adjustment will be made at the time of final acceptance of the building for ceramic tile and vinyl wall coverings installed but not included as part of the basic rental rate. VA will use each unit cost to make a lump sum payment or rental increase if the amount of material required by the layout is more than specified or take a credit from the rental if the amount is less than specified. Offerors are required to state on Exhibit A of Schedule B-1:

a) The cost per linear foot of fully-finished office subdividing ceiling-high partitioning.
b) The cost per linear foot of sound conditioning for subdividing partitions (See paragraph 5.13 of this solicitation for definition of sound conditioning).
c) The cost in excess of cost cited in (a) above per linear foot of office subdividing partitioning (full-height finished floor to underslab).
d) The cost per floor-mounted duplex electrical outlet.
e) The cost per wall-mounted duplex electrical outlet.
f) The cost per floor-mounted telephone/data outlet.
g) The cost per wall-mounted telephone/data outlet.
h) The cost per floor-mounted fourplex (double duplex) electrical outlet.
i) The cost per wall-mounted fourplex (double duplex) electrical outlet.
j) The cost per interior door.
k) The cost per square foot of vinyl wall covering.
l) The cost per square foot of ceramic tile.

Section 5 of the SFO Basic Solictation Requirements, "Architectural Finishes."

5.2 CEILINGS
Ceilings must be at least 8’-0" and no more than 11’0" from the floor to the lowest obstruction.

5.3 WALL COVERINGS
Walls shall be covered in accordance with Schedule C or other requirements of this Solicitation. See "Federal Specifications, Wall Covering, Vinyl Coated – CCC-W-408C" in the Standard Details section of this Solicitation.

5.4 PAINTING
Immediately prior to VA occupancy, all surfaces designated by the VA for painting must be newly painted in colors acceptable to the VA.

* * * * * * * *

5.12 PARTITIONS SUBDIVIDING
Office subdividing partitions must be provided at a ratio of one linear foot for each 10 square feet of space provided. They may be metal movable or wallboard applied over metal studs with a minimum of 24 inches on center. They must extend from the finished floor to the finished ceiling . . . .

* * * * * * * *
Of the total partitions provided, 400 linear feet will be prefinished or taped and painted in a workmanlike manner with a rubber or vinyl base installed. The remainder will be covered with special wall finishes as specified in Schedule B. HVAC must be rebalanced and repositioned, as appropriate, after installation of partitions.

Schedule A, "Special Requirements To Basic SFO To Be Included in Rental Rate"

* * * * * * * *

6. CEILING HEIGHTS:
A minimum ceiling height of 10 feet shall be provided in the following areas:

Pharmacy
Radiology
Medical Records Storage
Supply Warehouse

Schedule B, Paragraph I, "Instructions for Pricing this Schedule."

Pricing lines have been provided at the left-hand side of the items to be included for pricing purposes in the offer. The offeror is required to identify the total price involved for each line item.

* * * * * * * *
Items marked (*) are to be provided by the lessor in the identified room, but are either specifically called for in the Basic Solicitation, (e.g. drinking fountains) or identified in a paragraph specifying an allowance for payment under provision of the Basic Solicitation (e.g., telephone outlets). These items are not identified for pricing in Schedule B.

Guidance is provided in the form of "NOTES", which are not items to be paid for in the lump sum. If a cost is attributable to these "Notes", it should be included in the rental consideration.

An adjustment will be made at the time of final inspection on those items specified in Schedule B which require the lessor to provide a cost per linear foot if there is any deviation between the quantity provided and the Government's estimated quantity.

Schedule B consists of a listing of Clinic-wide requirements and special requirements such as cabinets, nurse call stations, and prefabricated bedside patient units for each room. Some rooms also include asterisked items such as telephone outlets for which no price is required and the Schedule contains notes for some rooms giving instructions on other required equipment installation and construction which also are not priced. Neither VWC nor CWT is listed or identified by an asterisk or note in Schedule B.

Exhibit A to Schedule B ("Exhibit A"), entitled "Unit Costs For Adjustment" is a table listing the following fourteen separate "Items":

1. Office subdividing, fully-finished ceiling-high partitioning.

2. Sound conditioning for ceiling-high, subdividing partitioning above.
3. Office subdividing, full-height, finished floor to underslab, (additional cost over 1. above).
4. Floor-mounted duplex electrical outlet.
5. Wall-mounted duplex electrical outlet.
6. Floor-mounted telephone outlet.
7. Wall-mounted telephone outlet.
8. Interior Door.
9. Painted Surface.
10. Ceramic Tile Floor Covering.
11. Carpeting.
12. Vinyl Composition Floor Covering.
13. Vinyl Wall-Covering.
14. Ceramic Tile Wall-Covering.

The table consists of columns in which Brant inserted the cost of materials, the number of labor hours, the per hour labor cost, and the total price for installation for the unit of measurement specified in the table. The last two items of the table, "Vinyl Wall-Covering" and "Ceramic Tile Wall-Covering", are separated from the previous twelve by a solid black line. Directly below the separation line is the following sentence: "Do not include the cost of the items below in the basic rent." Following this statement is the tabular format for Item 13: "Vinyl Wall-Covering *" and Item 14: Ceramic Tile Wall-Covering *." Below the table is the following statement:

> * Since the measurement of designated wall-covering cannot be determined prior to design, a cost adjustment will be made at the time of final acceptance of the building for ceramic and vinyl wall-coverings installed but not included as part of the basic rental rate.

(R4, tabs 1-2)

Schedule C, "Function, Space, and Finish Schedule" of the SFO lists the estimated net square feet of floor space in each room and area of the Clinic. Schedule C also designates the type of floor and wall coverings required in each area and room. The bulk of the wall covering specified in Schedule C was designated as either vinyl or vinyl fabric. The parties agree that Items 1 and 3 of Exhibit A, office the partitions, required installation of wallboard installed on metal studding, taped, sanded, and painted. (R4, tabs 1, 3, 12, 14-15, 18-19, 21)

The Exhibit A unit price for VWC is $1.35 per square foot; the price for CWT is $6.13. Brant, with the VA's approval, installed factory finished, vinyl-covered wallboard instead of non-covered wallboard in all rooms and areas of the Clinic calling for walls or partitions and specified in Schedule C to be either painted or covered in VWC. Brant installed a total of 95,956 square feet of vinyl-covered wallboard and 5,655 square feet of

CWT. According to the VA, based on Schedule C of the Contract, the Contract required installation of 71,629 square feet of vinyl-covered wallboard and 5,363 square feet of CWT.

(R4, tabs 1, 12-15, 18)

Between December 1996 to April 1997, Brant and the VA negotiated the amount due Brant under the Contract Unit Cost For Adjustments clause. Brant insisted that it should be paid for all vinyl-covered wallboard and CWT installed at the unit price stated in Exhibit A. The VA, on the other hand, maintained that a certain, base amount of installed vinyl-covered wallboard and CWT was included in the basic rental price and that it was required to pay Brant only for quantities of VWC and CWT Brant installed in excess of this base amount. The VA also asked Brant to provide a credit based on the Government's assertion that vinyl-covered wallboard was cheaper to install than regular wallboard that was site painted or covered. The negotiations concluded the first week of April 1997 and the dispute concerning vinyl-covered wallboard and CWT was joined on April 10, 1997 as is evidenced by the parties' execution of SLA No. 4 effective on that date. SLA No. 4 presents the additions and subtractions to the Contract lump sum payment. It lists nine of the unit price items from Exhibit A in tabular format. The table shows the quantity of an item required, the quantity provided, the quantity difference, and the amount due. Items 7-9 of this table are "Ceramic Wall Tile", "Ceramic Floor Tile", and Vinyl Wallboard, respectively. Following the table is this statement:

> This [SLA 4] represents full and final payment for any and all claims for items listed 1 through 6, under the unit cost adjustment clause of the lease. Items 7-9 are disputed items, which are being authorized for payment by the Contracting Officer by means of settlement by determination.

On April 17, 1997, the Contracting Officer ("CO") issued a final decision (characterized as a "Settlement By Determination") setting the amount due Brant under the Unit Cost For Adjustments clause. The payment allowed by the CO for ceramic wall tile is the same as that stated in SLA No. 4. It is based on the square footage difference between the quantity the VA estimated was included in the annual lease price and the quantity actually installed multiplied by the per square foot price proposed by Brant in Exhibit A. The payment allowed for vinyl-covered wallboard is the same as that stated in SLA No. 4 and is based on an $.89 per square foot cost multiplied by the difference between the quantity of installed vinyl wallboard the VA estimated was part of the annual lease price and the quantity of vinyl-covered wallboard actually installed. The VA's per square foot price of $.89 reflects the difference between the $1.35 price per square foot of VWC set in Exhibit A and the $.46 per square foot price for painting estimated by the VA. The VA derived this estimate from the 1994 edition of the Means, "Building Construction Cost Data" ("Means"). Brant priced painting at $.42 per square foot in Exhibit A. (R4, tabs 1-2, 4-5, 8-10, 11-12, 14-15, 18-19)

In a response to the "Contracting Officer Statement" provided as part of the Appeal

File, Brant quantified its claim as $100,463; $32,865 for CWT and $67,588 for VWC. Brant, in the response to the Contracting Office Statement, explained the amount due for VWC as follows:

> The CO also states that '…the Lessor is not entitled to payment for vinyl wall and office subdividing partitions fully finished if only one was provided. A 'fully finished' partition is interpreted to mean a typical wall constructed of 2" x 4" studs covered with gypsum wallboard, taped and painted with based installed.
>
> Offeror read the SFO to require 'fully finished' partitions exactly as described above and provided a unit price for such partitions accordingly – i.e. a painted wall. The Offeror/Lessor agrees that he should not be paid for both paint and vinyl wall covering was calculated using the unit costs provided in the SFO as follows:
>
> | | |
> |---|---|
> | Cost for vinyl wall covering | $1.35 per S.F. |
> | Less cost for painting | $(.42) per S.F. |
> | Difference in cost | $ .93 per S.F. |

Brant is party to another lease (Lease No. 08K-07-86) with the VA entered into in 1986 or 1987 in which Brant was paid a lump sum for all VWC and CWT it installed as part of the unit cost adjustment. The entire lease is not in the record; however, the portions of the lease submitted are not identical to the Contract. (R4, tabs 20, 21; Exh. A-1)

In its Complaint, Brant seeks $96,625 for installation of CWT and VWC. Brant's Schedule of Costs reflects a claim of $140,764.65 due for installation of vinyl-covered wallboard and CWT based on the asserted liability of the VA to pay $6.13 per square foot for 5,665 square feet of CWT and $1.35 per square foot for 95,956 square feet of VWC. Brant makes no claim for ceramic floor tile. Brant also seeks payment for interest in the amount of $8,418.34 plus an unspecified amount of attorneys' fees. The VA paid Brant $1,790.00 for 292 square feet of additional CWT at the price of $6.13 per square foot and $21,651 for 24,327 square feet of additional vinyl-covered wallboard at a price of $.89 per square foot. (Complaint, R4, tab 21, Exhs. A-2, G-1)

DISCUSSION

ENTITLEMENT

Brant asserts that the VA breached the unambiguous terms of the Contract by failing to pay for all installed vinyl-covered wallboard and CWT as required by the Contract and

that the Contract terms for payment of vinyl-covered wallboard and CWT should be interpreted in light of a existing lease containing the same terms and conditions relevant here between Brant and the VA wherein the VA paid for all VWC installed. The VA counters that Brant failed to inquire about patently ambiguous Contract terms relating to payment for CWT and VWC installed. According to the VA, the Contract is ambiguous as to whether payment will be made for the entire quantity of vinyl-covered wallboard and CWT installed or only for vinyl-covered wallboard and CWT installed in excess of the estimated quantities of those items, the cost of which were required to be included in the price for the annual lease payment.

The question confronting us in this appeal is one of contract interpretation. As is well settled, we interpret contracts by examining the plain language of the contract, reading all parts of the Contract as a whole, and giving reasonable meaning to all of its parts. We make our interpretation such that no part of the contract is made inconsistent, superfluous, or redundant. ***Agency Construction Corp.***, VABCA Nos. 4559-60, 96-2 BCA ¶ 28,611; ***L & L Insulation, Inc.***, VABCA No. 3734, 95-2 BCA ¶ 27,759; ***United International Investigative Service v. United States***, 109 F.3d 734 (Fed. Cir. 1997); ***Gould, Inc. v. United States***, 935 F.2d 1271 (Fed. Cir. 1991); ***Edward R. Marden Corp. v. United States***, 803 F.2d 701 (Fed. Cir. 1986).

Applying this standard, we find the Contract to be plain on its face. The Contract terms for payment for the installation of VWC and CWT provide for payment for the entire quantity of those items installed at the unit prices specified in Exhibit A.

The VA allegation of ambiguity rests on its assertion that Section 3.2 of the SFO Basic Solicitation Requirements conflicts with Exhibit A. Section 3.2 sets forth the mechanism for making Contract price adjustments based on unit prices for actual quantities of certain designated items installed. The Section recognizes that actual quantities of the items required to be unit priced may differ from the quantities projected for inclusion in the price proposal for the rental rate. Significantly, Section 3.2 provides special instructions for CWT and VWC, recognizing the particular difficulty of estimating the cost of CWT and VWC prior to actual layout of the Clinic rooms. The VA, however, interprets the "installed but not included in the basic rental rate" phrase of the Section 3.2 sentence dealing with CWT and VWC and concludes that these items are to be treated under Section 3.2 the same as any other item required to be unit priced. In effect, the VA says that the sentence covering VWC and CWT in Section 3.2 is superfluous. It is the VA's interpretation of the "intent" of Section 3.2, not the Contract language, which creates the asserted ambiguity and makes the VWC and CWT sentence superfluous. The VA puts forward, as a second, reasonable interpretation of the Contract, that an amount of CWT and VWC (derived from Schedule C of the Contract) is included in the rental price. However, the VA ignores the plain meaning of the Section 3.2 CWT and VWC language. Section 3.2, separately identifying CWT and VWC, obligates the VA to adjust the Contract rental or lump sum prices for any quantity of CWT and VWC installed that is not included in the basic rental rate. Section 3.2 means exactly what it says.

Exhibit A both implements, and is entirely consistent with, Section 3.2. First, Exhibit A, by the black separation line and the repetition of the CWT and VWC sentence in Section 3.2, indicates that CWT and VWC are to be treated differently than the items appearing above the separation line. Second, the statement expressly instructing

proposers not to include CWT and VWC in the basic rental rate does not conflict with Section 3.2. It simply implements Section 3.2 by specifying that no CWT and VWC costs were to be included in the proposal for the rental rate. Such an eventuality is clearly within the ambit of the "installed but not included in the basic rental rate" language of Section 3.2. Thus, the only reasonable interpretation of the Exhibit A sentence, when read in conjunction with the rest of Exhibit A and Section 3.2, is that an adjustment based on the entire quantity of CWT and VWC installed at the price stated in Exhibit A will be made in the Contract price upon the VA's final acceptance of the construction work.

Heeding the rules for contract interpretation as discussed above, under the plain language of the Contract, giving effect to all of its relevant parts and rendering no part meaningless, we find that there is no ambiguity in the Contract terms relating to payment for CWT and VWC. We will not allow the VA to create an ambiguity through an interpretation of the intent and meaning of Section 3.2 requiring us to ignore the actual words in the Contract. Brant is entitled to be paid for all CWT and VWC installed.

Since the Contract is not ambiguous, despite the VA's assertions to the contrary, Brant has no burden to prove that it relied on its interpretation. The payment term for CWT and VWC is clear and Brant is entitled to the benefit of the bargain represented in the Contract language. ***Fruin-Colnon Corporation v. United States***, 912 F.2d 1426 (Fed. Cir. 1990).

The VA engages in an extensive discussion in its Main Brief concerning a purported patent ambiguity existing between the Contract Changes clause and Brant's interpretation of the CWT and VWC pricing terms. This convoluted argument apparently arises from a position espoused by Brant in the course of negotiations over unit price adjustments prior to the execution of SLA No. 4 concerning its perception of the manner in which it could be paid for CWT and VWC. We find this entire discussion irrelevant to this case; it represents a strained effort by the VA to create a "patent ambiguity." As Brant points out in its Reply Brief, it has not cited the Changes clause and asserts no right to recovery based on that clause. Consequently, we see no need to discuss further whether the terms of the Unit Cost For Adjustments clause, Exhibit A, and the Changes clause of the Contract conflict and whether that conflict is "patent."

Similarly, since we have found the Contract terms for payment of CWT and VWC to be unambiguous, we need not discuss Brant's assertion that we interpret the Contract by turning to the VA's payment for all VWC installed in a prior lease between Brant and the VA.

In the Complaint, Brant characterized its claim as a breach of contract. However, the evidence in the record and Brant's Main Brief belie the breach analysis and present the claim for what it is; a dispute over the interpretation of the Contract. Since the claim can be redressed within the four corners of the Contract, there is no breach of contract. ***Johnson and Sons Erectors Co. v. United States***, 231 Ct. Cl. 753, *cert. denied,* 459 U.S. 971 (1982); ***PAE International***, ASBCA No. 45314, 98-1 BCA ¶ 29,347; ***Morrison-Knudsen Co. v. United States***, 345 F. 2d 833, (Ct. Cl. 1965).

We have found that the Contract, as urged by Brant, requires payment for all CWT and VWC installed; therefore, we need not address Brant's alternate theories of recovery,

rescission and reformation.

QUANTUM

In discharge of its Contract obligation to install VWC, Brant, with the approval of the VA installed vinyl-covered wallboard. Use of vinyl covered wallboard permitted Brant to avoid the requirement to paint the office subdividing partitions, a requirement both parties agree existed. Thus, the VA is entitled to a credit for the Contractually required painting Brant was able to avoid by its use of vinyl-covered wallboard. As Brant concedes, its payment for vinyl wallboard should be at a unit price of $.93 per square foot. This price reflects the difference between the price of vinyl-covered wallboard of $1.35 per square foot and the Contract price of $.42 per square foot for the painting. We find this a reasonable basis to adjust the price of the VWC to reflect the actual installation.

Thus, Brant is entitled to payment for installation of 95,956 square feet of vinyl-covered wallboard at $.93 per square foot or $89,239 (we will round to the nearest dollar in all of our computations). Of course, Brant is also entitled to payment for the full amount of CWT installed. 5,655 square feet of CWT was installed at a price of $6.13 for which Brant is entitled to payment of $34,665. Thus, the total payment for vinyl-covered wallboard and CWT due Brant is $123,904. Brant has been paid $23,441 for CWT and vinyl-covered wallboard; therefore, Brant is entitled to an additional payment of $100,463 for installation of CWT and vinyl-covered wallboard.

Brant has claimed interest in the amount of $8,418.74, which it computes based on a claim amount of $140,764.65 from April 10, 1994. It is not clear the basis on which Brant claims interest. In the absence of a contract provision or other law providing payment of interest or the direct tracing to a specific loan or necessity for increased borrowing, interest may not be recovered against the United States as an equitable adjustment. Neither circumstance is evidenced here. Under the *Contract Disputes Act* (*CDA*), Brant is entitled to interest on the amount we here award computed from the date the CO received the "claim" until payment is made. Prior to April 10, 1997, Brant was requesting payment under the Contract for CWT and vinyl wallboard. Upon the CO's unilateral determination of the amount to be paid under the CWT and vinyl-covered wallboard in SLA No. 4, Brant's payment request became a disputed claim. Therefore, Brant is entitled to cda interest on the amount here awarded computed from April 10, 1997. ***Reflectone v. Dalton***, 60 F.3d 1572 (Fed. Cir. 1995); ***J.W. Bateson Company, Inc.***, VABCA No. 1148, 86-1 BCA ¶ 18,585; ***Dravo Corporation. v. United States***, 594 F. 2d 842, 219 (Ct. Cl. 1979).

Brant's demand for attorney fees is premature. Brant's entitlement to attorney fees, if any, will be determined under the *Equal Access To Justice Act* and Brant may submit an application for such fees within 30 days of this decision becoming final under the terms of the *Act*. *See* ***John Farquhar Construction Company Inc.***, VABCA Nos. 1702E, *et al.*, 87-2 BCA ¶ 19,789.

DECISION

For the foregoing reasons, the Appeal of Brant Construction Management, Inc.,

VABCA-5391, under Lease No. 084B-020-94, is Sustained. Appellant, Brant Construction Management, Inc., is entitled to a judgment of $100,463 plus interest pursuant to the *Contract Disputes Act* from April 10, 1997.

Date: October 8, 1998

_____
Richard W. Krempasky
Administrative Judge
Panel Chairman

We Concur:

_____
Morris Pullara, Jr.
Administrative Judge

_____
William E. Thomas, Jr.
Administrative Judge